

Hearing Date/Agenda Number
P.C. 03/24/2004 Item:

File Number
CP03-054

Application Type
Conditional Use Permit

Council District 3 SNI 13th Street

Planning Area Central

Assessor's Parcel Number(s)
467-19-059, 467-19-077

STAFF REPORT

PROJECT DESCRIPTION

Completed by: F. Lee Butler

Location: West side of North 6th Street approximately 170 feet south of East St. John Street (73 N. 6th Street)

Gross Acreage: 0.16

Net Acreage: 0.16

Net Density: n/a

Existing Zoning: CG-Commercial General

Existing Use: **Single-room-occupancy (SRO) living unit facility/ 6 units**

Proposed Zoning: No change

Proposed Use: **Single-room-occupancy (SRO) living unit facility/ 8 units**

GENERAL PLAN

Completed by: FLB

Land Use/Transportation Diagram Designation
General Commercial with Transit Oriented Development Corridor
Overlay

Project Conformance:
☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: FLB

North: Private Parking Lot

CG – Commercial General

East: Public School

RM – Multiple Family Residential

South: Guest House

RM – Multiple Family Residential

West: Offices

CG-Commercial General

ENVIRONMENTAL STATUS

Completed by: FLB

☐ Environmental Impact Report found complete
☐ Negative Declaration
☐ Negative Declaration adopted on

[x] Exempt
[] Environmental Review Incomplete

PUBLIC AGENCY COMMENTS RECEIVEDCompleted by: F. Lee Butler

Department of Public Works – Attached

Other Departments and Agencies

None

GENERAL CORRESPONDENCE

None

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

On August 26, 2003 the applicant, Oscar Arguello, applied for a Conditional Use Permit requesting to legalize an existing 390 square foot addition and to add 130-square-feet to the rear of an existing single-room-occupancy (SRO) residential structure. The subject site is located at 73 N. 6th Street, on the west side of N. 6th Street approximately 170 feet south of E. St. John Street. Planning has not previously approved a Conditional Use Permit for the SRO facility; the existing operation is legal nonconforming. Six legal bedrooms exist at the facility, and the 520 square feet of additional area includes two additional bedrooms into the existing SRO facility, bringing the total number of bedrooms in the SRO to eight. Per Table 20-90 of the San Jose Municipal Code, a SRO living unit is a conditional use in the CG – Commercial General Zoning District, therefore, the proposed expansion of the existing SRO requires approval of a Conditional Use Permit. Also included in the request is the removal of one, non-ordinance sized Oak tree measuring approximately 47 inches in circumference at two feet above grade.

The existing two-story Victorian building was originally constructed circa 1901. However, the structure is not listed in the City of San José Historic Resources Inventory. Modifications will be reviewed in the context of the Secretary of the Interior's Standards for Rehabilitation of Historic Structures because it is a historic resource over 50 years of age.

The subject SRO facility shares parking with the adjacent guesthouse to the south at 61 N. 6th Street.

Project Description

The proposed 520 square foot addition includes approximately 180 square feet of non-living storage space on the first floor and approximately 340 square feet of living space on the second floor. No kitchen facilities exist within any of the bedrooms. Shared kitchen facilities are located on the second floor, and the first floor dining area is the only habitable conditioned space on that floor. The exterior addition is designed with wood siding and composition shingles to match those of the existing residence. The proposed exterior changes, as discussed below in more detail, are in character with the historical conditions of the structure,.

The application requests the removal of one non-ordinance sized Oak tree measuring approximately 47 inches in circumference located to the rear in the northwest corner of the property. The applicant has indicated that the tree is dead.

ENVIRONMENTAL REVIEW

The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301(e)(1). Under this section, projects qualifying for exemption include those that involve the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to an expansion of 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less. In this instance, the project qualifies under this exemption in that it proposes a 520 square foot addition that is less than 50 percent of the area of the structure before the addition. Furthermore, the proposed addition of 520 square feet constitutes a negligible expansion of use at the time the determination was made.

GENERAL PLAN CONFORMANCE

The San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial supports miscellaneous commercial uses. Additionally, the General Plan recognizes that "there may be a need to provide housing for very low-income households in some commercial areas close to jobs and services. The types of units used to provide this housing typically require the sharing of sanitation and

Additionally, consistent with the Transit-Oriented Development Corridor overlay, the proposal is intensifying development in an area where the intensified use and public transit will be mutually supportive and will help create vibrant pedestrian oriented neighborhoods.

ANALYSIS

The issues analyzed for the proposed project include (1) conformance with the Zoning Ordinance requirements for SRO living unit facilities, (2) conformance with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures, (3) site design issues, and (4) landscaping issues.

Conformance with Zoning Ordinance Criteria for Single Room Occupancy (SRO) Living Units

Part 15 of Chapter 20.80 of the San Jose Municipal Code lists various size, design, access, and facility requirements for approval of a SRO living unit facility. Either through conditions of approval, or as the facility currently exists, the proposed expansion of the SRO living unit facility meets all of the requirements noted in the aforementioned Code section. A copy of Part 15 of Chapter 20.80 of the San Jose Municipal Code is attached.

In addition to the requirements from Part 15 of Chapter 20.80 of the San Jose Municipal Code, the application must also comply with the parking requirements called out in Table 20-190 of the San Jose Municipal Code. Because the subject facility shares a rear parking area with the adjacent guesthouse to the south, the parking requirements of the two facilities need to be evaluated together. The Zoning Code requires 0.25 parking spaces per SRO living unit with shared kitchen and bathroom facilities when the structure is located within 2,000 feet of public transportation. The eight bedroom SRO living unit facility requires two parking spaces because the subject structure is located within 2,000 feet of a bus stop at the northeast corner of Santa Clara and North 7th Streets. To the south, the existing guesthouse at 61 N. 6th Street has four bedrooms and one staff member. The Zoning Code requires one parking space per guest room plus one parking space per employee for guesthouse uses, so five parking spaces are required for the adjacent use. In total, seven parking spaces are required on the site, and fourteen on-site spaces are provided, ample to support the existing uses and the proposed expansion. This information is summarized in the below table.

	Minimum Parking Required (Per Table 20-190)	61 N. 6th Street		73 N. 6th Street	
		Required	Provided	Required	Provided
SRO with shared kitchen and					

Conformance with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures

The subject structure is not listed on the City of San Jose Historic Resources Inventory, however, because the structure exceeds 50 years of age, the proposal has been evaluated for conformance with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures. Standard No. 9 states that "new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment." The location and differentiated roofline distinguish the proposed addition as such, and the siding, window trim, and roof materials and colors match those of the existing structure. Furthermore, the addition to the rear of the structure will result in a minimal visual impact from the street. The proposal was not referred to the Historic Landmarks Commission since the property is not listed on the Historic Resources Inventory; however, Historic Preservation Staff in the Planning Divisions has reviewed the proposal and found it consistent with the Secretary of the Interior's Standards for Rehabilitation of Historic Structures.

Site Design

The plans submitted show a single 64-gallon roll-away garbage can serving the eight SRO living units. Upon visiting the site, staff observed a dumpster at the property. Should the continued use of a dumpster for trash disposal be desired, the applicant is required to provide a covered trash enclosure for the dumpster, subject to the approval of the Director of Planning, Building, and Code Enforcement through the issuance of a Permit Adjustment. The alternative is to use residential roll-away garbage cans which would not require any approval from the Planning Divisions. Additionally, staff observed that only a portion of the driveway, parking, and circulation areas are currently paved. To conform to City standards, staff has included a condition requiring that these areas be paved.

Tree Removal/Landscaping

The application includes a request to remove an Oak tree measuring 47 inches in circumference. Staff observation concluded that the tree proposed for removal is actually a live Redwood tree. The tree appears to be in good condition, with a fair amount of green foliage. No arborist report was submitted with the application as evidence of the tree's condition. Staff is recommending that the existing tree remain. Also, in accordance with comments from the Department of Public Works, street trees will be installed in the public-right-of-way along the project street frontage, subject to the approval of the City Arborist.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been available to discuss the proposal with members of the public. Additionally, prior to the public hearing, an electronic version of the staff report has been made available online, accessible from the Planning Commission agenda, on the Planning Divisions website.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the proposed Conditional Use Permit and include the following facts, findings, and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of General Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the CG-Commercial General Zoning District.
3. Under the provisions of Section 15303(e)(1) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment.
4. The subject site is generally surrounded by a guesthouse to the south, a public school across N. 6th Street to the east, a private parking lot to the north, and an office building to the west. .
5. The existing building was originally constructed circa 1901, but it is not listed in the City of San José Historic Resources Inventory.
6. The subject structure is currently used as a single-room-occupancy (SRO) living unit facility with shared bathroom and kitchen facilities.
7. The applicant is requesting to legalize an existing 390 square foot addition and to add approximately 130 additional square feet to the rear of an existing single-room-occupancy (SRO) living unit facility. The 520 square feet of additional area incorporates two additional bedrooms into the existing SRO facility, bringing the total number of bedrooms in the SRO to eight.

10. The parking requirements called out in Table 20-190 of the San Jose Municipal Code are met through a shared parking arrangement with the adjacent property to the south located at 61 N. 6th Street. The subject facility requires two on-site parking spaces and the facility to the south requires five on-site parking spaces. Together, seven spaces are required, and fourteen spaces are provided on-site.
11. Access to and from the common parking area at the rear of the subject property is gained through use of a common driveway located on the subject property and the adjacent property to the south.
12. The proposed expansion of the existing SRO living unit facility meets all of the requirements of the Zoning Ordinance, including those in Part 15 of Chapter 20.80 of the San Jose Municipal Code.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed expansion of the SRO living unit facility is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designation of General Commercial in that the designation permits miscellaneous commercial uses. The General Plan states that “there may be a need to provide housing for very low-income households in some commercial areas close to jobs and services. The types of units used to provide this housing typically require the sharing of sanitation and kitchen facilities by one or two person households occupying small, one room units. These uses can be contained in a building designed solely for such uses or in a building designed to provide commercial space on the lower floors.” Consistent with the Transit-Oriented Development Corridor overlay, the proposal is intensifying development in an area where the intensified use and public transit will be mutually supportive and will help create vibrant pedestrian oriented neighborhoods.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act. The Director of Planning, Building and Code Enforcement has determined that this project is exempt from environmental review pursuant to the California Environmental Quality Act (CEQA) Guidelines Section 15301(e)(1). Under this section, projects qualifying for exemption include those that involve the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. The types of "existing facilities" itemized below are not intended to be all-inclusive of the types of projects which might fall within Class 1. The key consideration is whether the project involves negligible or no expansion of an existing use. Examples include but are not limited to an expansion of 50 percent of the floor area of the structures before the addition or

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. ~~Acceptance and Payment of Recording Fees~~ The "Acceptance of Permit and Conditions" form shall

3. **Trash Enclosure.** The applicant must apply for and receive approval of a Permit Adjustment, subject to the discretion of the Director of Planning, Building, and Code Enforcement, authorizing the location and specifications for a new trash enclosure for the dumpster that serves the site. Should not approval be sought, the site shall be served by residential roll-away garbage cans.
4. **Facilities Management Plan.** The applicant must receive approval of a facilities management plan, subject to the discretion of the Director of Housing. The approved plan shall be presented to the Planning Divisions.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
2. **Conformance with Plans.** The proposed construction and development shall conform to approved development plans entitled, "73 & 61 North 6TH St," dated February 4, 2004, on file with the Department of Planning, Building, and Code Enforcement and to the San José Building Code (San José Municipal Code, Title 24).
3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Refuse/Trash Enclosure.** A trash enclosure shall be constructed at the site to adequately screen and shelter refuse, in accordance with Conditions Precedent No. 3. All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping. The applicant

8. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
9. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
10. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 24 hours of defacement.
11. **Fire Department Comments.** The applicant is to comply with all Fire Department comments at the plan review stage.
12. **Building Comments.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Construction Plans.* This Permit File Number, CP03-054, shall be printed on all construction plans submitted to the Building Division.
 - b. *Conformance Review.* A construction plan conformance review is required. Plans submitted to the Building Division shall be forwarded to the Planning Project Manager to ensure conformance with this approval.
 - c. *Management Plan.* In accordance with Conditions Precedent No. 4, prior to the issuance of Building Permits, a facility management plan, approved by the Director of Housing, must be presented to the Planning Divisions.
13. **Public Works Comments.** A Development Clearance through a Minor Street Improvement Permit shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-16501) to the satisfaction of the Director of Public Works:
 - a. *Storm Drainage, Sewer Fees.* In accordance with City ordinance, storm sewer area fees, sanitary sewer connection fees and sewage treatment plant fees are due. Less previous credits

curb, gutter, sidewalk, and pavement along the project frontage. Remove and replace any curb, gutter, and sidewalk damaged during the construction of the proposed project.

- d. *Driveway.* Remove the existing five inch concrete curb for a distance of twenty (20) feet behind the back of the sidewalk in order to maintain an entrance width of no less than 20 feet.

- 14. **Pavement.** The common driveway shared by the subject SRO and the adjacent guesthouse to the south is to be paved. Additionally, the parking and circulation area at the rear of the property is also to be paved.
- 15. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set and are to match those of the existing residence.
- 16. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
- 17. **Trees.** No trees are authorized for removal with this permit. No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade, shall be removed without a Tree Removal Permit issued by the Director of Planning. Removal of any non-ordinance sized trees at the site shall require approval of a Permit Adjustment, subject to the discretion of the Director of Planning, Building, and Code Enforcement.
- 18. **Laundry Tub.** As indicated on the plans, a laundry tub must be installed in the rear laundry room to conform with the SRO living unit requirements called out in Part 15 of Chapter 20.80 of the San Jose Municipal Code.
- 19. **Parking.** On-site parking is to be used only for the subject SRO living unit facility and for the adjacent guesthouse to the south.

Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
- c: Oscar Arguello, 72 North 5th Street, San José, CA 95112
Cindy Anacleto, Code Enforcement Division
Building Division (2)